

1977 No. 494

HARBOURS, DOCKS, PIERS AND FERRIES

The Falmouth Harbour Revision Order 1976

<i>Made</i>	23rd November 1976
<i>Laid before Parliament</i>	25th January 1977
<i>Coming into Operation</i>	9th March 1977

The Secretary of State for Transport in exercise of the powers conferred by section 14 of the Harbours Act 1964(a) and now vested in him(b) and of all other powers enabling him in that behalf, and on the application of the Falmouth Harbour Commissioners, hereby makes the following Order:—

Citation and commencement

1.—(1) This Order may be cited as the Falmouth Harbour Revision Order 1976 and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(c).

(2) The Falmouth Harbour Act and Orders 1870 to 1958(d) and this Order may be cited together as the Falmouth Harbour Act and Orders 1870 to 1976.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“appointing authority” means each of the persons by whom Commissioners are, or are to be, appointed in accordance with article 3 (Change of constitution) of this Order;

“the Commissioners” means the Falmouth Harbour Commissioners;

“the harbour” has the same meaning as in section 4 (Interpretation) of the Falmouth Harbour Act 1958;

“the new constitution date” means the first day of the third month after the expiry of the month current at the commencement of this Order;

“the undertaking” means the undertaking of the Commissioners as authorised from time to time.

(2) Any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by or by virtue of any subsequent enactment including this Order.

(3) The Interpretation Act 1889(e) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Change of constitution

3.—(1) On and after the new constitution date the Commissioners shall, subject to any casual vacancies, consist of not less than seven, nor more than

(a) 1964 c. 40.

(c) 9 & 10 Geo. 6 c. 18; 1965 c. 43.

(e) 1889 c. 63.

(b) S.J. 1970/1681 (1970 III, p. 5551).

(d) 1870 c. clviii; 1937 c. lxx; 1958 c. xlvi.

eight, members of whom seven shall be appointed as provided by paragraph (2) of this article and one may be co-opted as provided by article 4 (Co-option of Commissioner) of this Order.

(2) One Commissioner shall be appointed by each of the following:—

- (a) the Secretary of State for Transport after consultation with the National Ports Council;
- (b) the Carrick District Council;
- (c) the General Council of British Shipping;
- (d) the Falmouth Docks and Engineering Company;
- (e) the Royal Yachting Association;
- (f) the Corporation of Trinity House, Deptford Strond;
- (g) the Falmouth Town Council.

Co-option of Commissioner

4.—(1) The Commissioners appointed under paragraph (2) of article 3 (Change of constitution) of this Order may, by a resolution supported by the votes of at least five of the Commissioners after notice of the meeting and of its purpose has been given in manner in which notices of meetings of the Commissioners are usually given, co-opt as an additional Commissioner one person who in their opinion has a substantial interest in the improvement, maintenance or management of the harbour or of the undertaking or who in their opinion has special knowledge or experience that would be of value to the Commissioners in the discharge of their functions.

(2) A person shall not be eligible for co-option under this article if he is employed by or has a substantial interest in or is a member or director of any of the appointing authorities or any body controlling any of the appointing authorities.

(3) A Commissioner co-opted under this article shall (unless he shall previously die or resign) continue in office for a period of three years from the date of his co-option and on the expiry of his term of office shall be eligible for co-option again.

Appointment of Commissioners and tenure of office

5.—(1) Each appointing authority shall not later than the sixth day preceding the new constitution date make their respective appointment in accordance with article 3 (Change of constitution) of this Order.

(2) Each Commissioner so appointed shall (unless he shall previously die or resign) continue in office as follows:—

- (a) the Commissioners appointed by the Secretary of State for Transport and by the Carrick District Council until 31st December 1979;
- (b) the Commissioners appointed by the General Council of British Shipping and by the Falmouth Docks and Engineering Company until 31st December 1978;
- (c) the Commissioners appointed by the Royal Yachting Association, the Corporation of Trinity House, Deptford Strond, and the Falmouth Town Council until 31st December 1977.

(3) (a) Each appointing authority shall not later than 1st November of the year in which the term of office of the Commissioner appointed by them expires and in each third year thereafter make their respective appointment in accordance with article 3 of this Order.

(b) Except in the case of first appointments under this Order each Commissioner so appointed shall (unless he shall previously die or resign) continue in office from 1st January next following his appointment for a term of three years and upon ceasing to hold office shall be eligible for reappointment.

(4) The appointments made under this article shall be notified in writing to the Clerk to the Commissioners.

Resignation of Commissioners

6. A Commissioner may at any time while he is in office resign his office by notice in writing to the Clerk to the Commissioners and, in the case of an appointed Commissioner, to the appointing authority by whom he was appointed.

Casual vacancies

7.—(1) A casual vacancy arising in the office of a Commissioner appointed in accordance with article 3 (Change of constitution) of this Order shall be filled by the appointing authority by whom that Commissioner was appointed by the appointment of another person to fill the vacancy.

(2) A person appointed under paragraph (1) hereof to fill a casual vacancy shall (unless he shall previously die or resign) hold office during the remainder of the term for which the person in whose place he has been appointed was appointed.

Disqualification of Commissioners

8.—(1) If the Commissioners are satisfied that a Commissioner:

- (a) has been absent from meetings of the Commissioners for six consecutive months or more without the permission of the Commissioners; or
- (b) has become bankrupt or has made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or
- (d) is otherwise unable or unfit to discharge the functions of a Commissioner;

the Commissioners may declare his office as a Commissioner to be vacant and thereupon the office shall become vacant and the Clerk to the Commissioners shall notify the fact to the appointing authority.

(2) For the purposes of paragraph (1)(a) of this article the attendance of a Commissioner at a meeting of any committee of the Commissioners of which he is a member shall be treated as attendance at a meeting of the Commissioners.

Expenses

9. The Commissioners may pay to any Commissioner such allowances and expenses as the Commissioners may determine.

Protection of Commissioners and officers from personal liability

10. Section 265 of the Public Health Act 1875(a) shall apply to the Commissioners as if any reference in that section to the said Act of 1875 included a reference to any local enactment relating to the Commissioners, any reference in that section to a local authority included a reference to the Commissioners and any reference in that section to a member or officer of such authority included a reference to a Commissioner or to any officer of the Commissioners.

Provisions applying to Commissioners

11. The provisions set out in the Schedule to this Order shall have effect with respect to the Commissioners.

Amendment and repeal

12. As from the new constitution date—

- (1) section 1 (Incorporation of Commissioners) of the Falmouth Harbour Order 1870 shall have effect subject to the omission of the words “not exceeding twelve in number”;
- (2) section 5 of the Falmouth Harbour Order 1870 shall have effect as if the following were substituted therefor:—

“Incorporation of parts of The Commissioners Clauses Act 1847.

5. The provisions of the Commissioners Clauses Act 1847(a) with respect to the qualification of Commissioners (except sections 6, 7, 8 and 9 thereof) are hereby incorporated with this Order:

Provided that section 16 as so incorporated shall have effect as if the words ‘or who for six months in succession is absent from all meetings of the Commissioners’ were omitted therefrom.”;

- (3) section 3 (Interpretation) of the Falmouth Harbour Order 1937 shall have effect subject to the omission from the definition of “The Commissioners” of the words “as constituted by the Falmouth Harbour Order 1870 as amended by this Order”;
- (4) section 4 (Interpretation) of the Falmouth Harbour Act 1958 shall have effect subject to the omission from the definition of “the Commissioners” of the words “as constituted by the Order of 1870”;
- (5) the following enactments shall be and are hereby repealed:—

The Falmouth Harbour Order 1870:

- Section 2 (Appointment of the several Commissioners);
- Section 3 (Determination of appointment of Commissioners);
- Section 4 (Provisions as to the election of Commissioners by shipowners);
- Section 6 (Commencement of powers).

The Falmouth Harbour Order 1937:

- Section 10 (Constitution of Commissioners).

W. T. Rodgers,

Secretary of State for Transport.

23rd November 1976.

PROVISIONS APPLYING TO THE COMMISSIONERS

1.—(1) At the first meeting of the Commissioners held on or after the new constitution date and at the first meeting of the Commissioners in each year thereafter the Commissioners present at the meeting shall choose one of their number to act as their chairman and at that meeting or any subsequent meeting the Commissioners present may choose another of their number to act as deputy chairman.

(2) So long as they continue as Commissioners the persons chosen under subparagraph (1) of this paragraph to act as chairman and deputy chairman respectively shall hold office as such from and including the meeting at which they are chosen until the next appointment of a chairman.

2.—(1) If any casual vacancy occurs in the office of chairman the Commissioners shall as soon as may be after the occurrence of such vacancy choose some other Commissioner to fill the vacancy.

(2) If any casual vacancy occurs in the office of deputy chairman the Commissioners may choose some other Commissioner to fill the vacancy.

(3) So long as they continue as Commissioners every person chosen under this paragraph to act as chairman or deputy chairman shall continue in office as such so long as the person in whose place he has been so chosen would have been entitled to continue in office if such vacancy had not occurred.

3. In the absence of the chairman the person for the time being holding office as deputy chairman shall have and may exercise all the powers of the chairman.

4. If at any meeting of the Commissioners neither the chairman nor the deputy chairman is present the Commissioners present at the meeting shall choose one of their number to be chairman of the meeting.

5. The Commissioners may act notwithstanding a vacancy in their number and no act of the Commissioners shall be deemed to be invalid by reason of any irregularity in the appointment of any Commissioner, or by reason of any person irregularly acting as a Commissioner.

6. The Commissioners may, subject to such conditions as they think fit, delegate any of their functions to a committee of the Commissioners.

7. If at any meeting of the Commissioners or of a committee of the Commissioners there is an equality of votes on any question the chairman of the meeting shall have a second or casting vote.

8. The quorum required for a meeting of the Commissioners shall be three and the Commissioners shall meet at least once in each quarter of each year.

9.—(1) If a Commissioner has any pecuniary interest, direct or indirect—

(a) in any contract or proposed contract to which the Commissioners are or would be a party or is a director of a company or body with which the contract or proposed contract is made or proposed to be made; or

(b) in any other matter with which the Commissioners are concerned;

and is present at a meeting of the Commissioners or of any committee of the Commissioners at which that contract or matter is considered, he shall—

(i) so soon as practicable after the commencement of that meeting disclose his interest;

(ii) not vote on any question with respect to that contract or matter; and

(iii) withdraw from the meeting if the Commissioners present by resolution require him so to do.

(2) This paragraph shall not apply to any interest—

- (a) which a Commissioner has in respect of the payment to the Commissioners of harbour dues;
- (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;
- (c) which a Commissioner has as an employee of a public utility undertaking or as a shareholder, not being a director of a company, unless he possesses more than five per cent. of the issued share capital of that company; or
- (d) which the Commissioners present at the meeting by resolution declare to be too remote.

10. Subject to the provisions of this Schedule the procedure and business of the Commissioners shall be regulated in such manner as the Commissioners may from time to time determine.

11. The Commissioners shall appoint a clerk, a harbour master and such other officers and servants as they may think necessary or expedient on such terms and conditions as they think fit.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order alters the constitution of the Falmouth Harbour Commissioners so as to consist of:—

- (1) Seven Commissioners of whom one shall be appointed by each of the following:—
 - (a) the Secretary of State for Transport after consultation with the National Ports Council;
 - (b) the Carrick District Council;
 - (c) the General Council of British Shipping;
 - (d) the Falmouth Docks and Engineering Company;
 - (e) the Royal Yachting Association;
 - (f) the Corporation of Trinity House, Deptford Strond;
 - (g) the Falmouth Town Council.
- (2) An additional Commissioner who may be co-opted by a resolution supported by at least five of the Commissioners holding office under the above paragraph being a person who in their opinion has a substantial interest in the improvement, maintenance or management of the harbour or the undertaking of the Commissioners or who in their opinion has special knowledge or experience that would be of value to them.

The Order also makes consequential amendments and repeals certain provisions relating to the constitution of the Commissioners and empowers the Commissioners in their discretion to pay allowances and expenses to any of the Commissioners.